

Proposed Rules – Chapter 390-16 WAC
For public hearing and possible permanent adoption on April 27, 2006, including
proposed staff amendments on pages 4, 5 and 10.

AMENDATORY SECTION (Amending WSR 02-12-007, filed 5/23/02, effective 6/23/02)

WAC 390-16-060 Forms for report of independent expenditures and electioneering communications. (1) The official form for reports of independent expenditures and electioneering communications as required by RCW 42.17.100 ~~((and))~~, 42.17.103 and 42.17.565 is designated "C-6," revised ~~((6/02))~~ 5/06. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504 and on-line at www.pdc.wa.gov. Any paper attachments shall be on 8 1/2" x 11" white paper.

(2) The C-6 report may be filed electronically consistent with WAC 390-19-040 by using an electronic filing alternative provided or approved by the commission. C-6 reports of electioneering communications shall be filed electronically as provided in RCW 42.17.565.

Brief Explanation: Consistent with stakeholder input, electioneering communications will be reported on the same form as independent expenditures. The C-6 form has been modified to accommodate disclosure of both types of campaign expenditures.

((STRICKEN GRAPHIC))



Form C6 6/02	This space for office use P O S T M A R K R E C E I V E D
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Use this form for: (check one)

- ☐ INDEPENDENT EXPENDITURES (Occurring at any time) — \$100 or more
- ☐ INDEPENDENT EXPENDITURE ADS (Appearing within 21 Days of an Election) — \$1,000 or more

See instructions on Reverse

1. Name and address of person making expenditure:
Name _____ Mailing Address _____ City / State / Zip Code _____

2. Candidate(s) or ballot proposition(s) supported or opposed.
Candidate/Proposition Names _____ Office/District/Proposition Number _____ Party (If Partisan) _____

Check
☐ Support or ☐ Oppose

☐ Support or ☐ Oppose

☐ Support or ☐ Oppose

Continued on attached sheet. ☐

3. Identify independent expenditures. Itemize expenditures of more than \$50 that are part of an independent expenditure supporting or opposing any state or local office candidate or ballot proposition.				
Date Made	Date first Published/ Presented	Name and Address of Vendor or Recipient	Description of Expenditure (E.g., direct mail, newspaper ad, TV or radio ad)	Amount or Value ("See Below")
Expenditures \$50 or less not itemized above				
Amount or Value		Total this report		\$ _____
*If no reasonable estimate can be made of value, describe activity, services, property or right furnished precisely and attach copy of item produced or distributed.		Total independent expenditures made by filer during this election campaign. Include expenditures shown in this report and previously submitted reports.		\$ _____

Person responsible for making Independent Expenditure:

I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, the above mentioned candidate, the candidate's authorized committee, or an agent of the candidate. I further certify that the above information is true, complete, and correct to the best of my knowledge.

Signature _____	Printed name _____
Street address _____	
City/State/Zip _____	
Date Signed _____	Place signed (city and county) _____

*RCW 9A.72.040 provides that: "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."

STRICKEN GRAPHIC))

INSTRUCTIONS – C6 REPORT Rev. 6/02

WHO MUST REPORT:

- (1) Persons who make independent expenditures aggregating \$100 or more anytime during an election campaign in support of or opposition to a candidate or ballot proposition.
- (2) Persons sponsoring independent expenditure political ads valued at \$1,000 or more that are mailed or presented to the public within twenty-one days of a primary, general or special election.

DO NOT report monetary or in-kind contributions made directly to or in coordination with a candidate or political committee.

WHEN AND WHERE TO REPORT:

When aggregate amount reaches:

Less than \$100

—No report is required

\$100 or more (or value cannot be estimated)

—Postmark within 5 days of making the expenditure.

If additional expenditures are made:

- 10th of month preceding election in which other reports are not required*
- 21 days prior to election*
- 7 days prior to election*
- 10th day of month after election*

**Required only when expenditures have been made since last report was submitted.*

Send **original to Public Disclosure Commission**. Send a **copy to the County Auditor** (county elections office) of the county of residence of the candidate supported or opposed. For ballot propositions, County Elections Officer of the county of residence of the person responsible for the independent expenditure. Persons making independent expenditures are advised to contact their City Clerk to learn if local filing is required by local ordinance.

\$1,000 or more and ads are presented to the public within 21 days of an election

—Deliver (electronic^①, fax^②, or paper format) to PDC within 24 hours of, or on the first working day after, the date the advertisement was first published, mailed, or otherwise presented to the public.

Additional independent expenditures of any amount following the expenditure listed on the initial filing must be reported within 24 hours of, or on the first working day after, the date the new advertisement is first published, mailed, or otherwise presented to the public.

① Fill out and sign electronic filing signature card, fax a copy of the signature card to the PDC, complete and file the electronic C6 report. Mail the original signature card to PDC within 24 hours.

② Fax a copy of the signed C6 report to the PDC and mail the original within 24 hours.

Send **original to Public Disclosure Commission**. County filing is **NOT** required for reports due within 24 hours. Persons making independent expenditures are advised to contact their City Clerk to learn if local filing is required by local ordinance.

Instructions on Page 3

- | | |
|---|-----------|
| 1. Name and complete postal mailing address of sponsor: | E-mail |
| | Telephone |

Date Made	Date First Presented/ Mailed	Name and Address of Vendor or Recipient	Description of Expenditure (e.g., direct mail or newspaper, TV or radio ad)	Amount or Value (*See Below)
Expenditures \$100 or less not itemized above			\$	

Total this report	\$
Total independent expenditures and electioneering communications made during this election campaign. Include amounts shown in this report and previously submitted C-6 reports.	\$

Candidate/Proposition	Office/District/ Proposition No.	Party	Check Support or Oppose	each candidate or proposition	proposition during election campaign
			<input type="checkbox"/> <input type="checkbox"/>	\$	\$
			<input type="checkbox"/> <input type="checkbox"/>	\$	\$
			<input type="checkbox"/> <input type="checkbox"/>	\$	\$
			<input type="checkbox"/> <input type="checkbox"/>	\$	\$
			<input type="checkbox"/> <input type="checkbox"/>	\$	\$
Continued on attached sheet <input type="checkbox"/>				\$	\$

Filer Name:

4. If reporting an Electioneering Communication, it is necessary to disclose information concerning the source of funding for the communication. Select the description that applies:

- a) ___ An individual using only personal funds.
- b) ___ An individual using personal funds and/or funds received from others.
- c) ___ A business, union, group, association, organization, or other person using only general treasury funds.
- d) ___ A business, union, group, association, organization, or other person using general treasury funds and/or funds received from others.
- e) ___ A political committee filing C-3 and C-4 reports. (RCW 42.17.040 - .090)
- f) ___ A political committee filing C-5 reports. (RCW 42.17.093)
- g) ___ Other

If (b), (d), (f), or (g) applies, complete section 5 below. If (e) applies, also complete section 5 if the committee received funds that were requested or designated for the communication.

5. Sources giving in excess of \$250 for the electioneering communication:

Date Received	Source's Name, Address, City, State, Zip	For individuals, Employer's Name, City and State	Amount
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
		Sub-Total	\$
	Continued on attached sheet <input type="checkbox"/>	Amount from attached pages	\$
		TOTAL FUNDS RECEIVED	\$

Sponsor of Independent Expenditure or Electioneering Communication

I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or an agent of a candidate nor does it otherwise constitute a contribution under RCW 42.17.020. I further certify that the above information is true, complete, and correct to the best of my knowledge.

Signature

Printed Name

Street address

City/State/Zip

Date Signed

Place Signed (city and county)

*RCW9A.72.040 provides that "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."

NEW SECTION

WAC 390-16-063 Additional information regarding C-6 report filing. (1) A political committee reporting pursuant to RCW 42.17.065, 42.17.080 and 42.17.090 is exempt from providing on a C-6 form itemized information concerning its sources of funds giving in excess of two hundred fifty dollars for an electioneering communication, unless the committee received funds that were requested or designated for the communication.

(2) An out-of-state political committee shall report pursuant to RCW 42.17.565 if it sponsors an electioneering communication defined in RCW 42.17.020.

(3) The sponsor of an electioneering communication shall report pursuant to RCW 42.17.565 and commission rules regarding electioneering communications, even if the expenditure also satisfies the definition of independent expenditure in RCW 42.17.020 or 42.17.100. Persons in compliance with this subsection are deemed in compliance with RCW 42.17.100 or 42.17.103.

(4) Any person making an expenditure that is reportable under RCW 42.17.200, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW 42.17.020 shall file pursuant to RCW 42.17.565 and commission rules regarding electioneering communications.

Brief Explanation: *This rule provides guidance regarding electioneering communication filing requirements to persons who also have reporting obligations under other sections of the disclosure law; that is, political committees, persons making independent expenditures and those sponsoring grass roots lobbying campaigns.*

AMENDATORY SECTION (Amending WSR 04-12-054, filed 5/28/04, effective 6/28/04)

WAC 390-16-207 In-kind contributions--Explanation and reporting. (1) An in-kind contribution occurs when a person provides goods, services or anything of value, other than money or its equivalent, to a candidate or political committee free-of-charge or for less than fair market value, unless the item or service given is not a contribution according to RCW 42.17.020 ((14)(b)) or WAC 390-17-405.

(2) An in-kind contribution also occurs when a person makes

an expenditure that

- Supports or opposes a candidate or a ballot measure,
- Meets the definition of contribution in RCW 42.17.020(~~((+14))~~) or WAC 390-05-210, and
- Is other than a monetary contribution made directly to a candidate or political committee.

For example, an in-kind contribution occurs when a person, after collaborating with a candidate or a candidate's agent, purchases space in a newspaper for political advertising supporting that candidate or opposing that candidate's opponent.

(3) An in-kind contribution also occurs when a person makes an electioneering communication that is a contribution as provided in RCW 42.17.570.

(4) According to RCW 42.17.095(~~((+8))~~) and WAC 390-16-238, a candidate may not use his or her campaign funds to make a contribution, including an in-kind contribution, to another candidate or a political committee. However, under RCW 42.17.095(~~((+3))~~), a candidate may use surplus funds as defined in RCW 42.17.020 to make a contribution to a political party or caucus political committee.

~~((+4))~~ (5) **In-kind contributions to recipients who have limits.**

(a) If a state office candidate receives in-kind contributions from any person valued at more than \$25 in the aggregate during an election cycle, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limit provided in RCW 42.17.640.

(b) If a bona fide political party or legislative caucus committee receives in-kind contributions from any person valued at more than \$25 in the aggregate during a calendar year, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limit provided in RCW 42.17.640.

(c) If a state official against whom recall charges have been filed or a political committee supporting the recall of a state official receives in-kind contributions from any person valued at more than \$25 in the aggregate during a recall campaign, the contribution is reportable by the giver and the recipient pursuant to chapter 42.17 RCW and is subject to the applicable contribution limits provided in RCW 42.17.640.

~~((+5))~~ (6) **Political committees that make in-kind contributions.** A political committee that makes in-kind contributions to a candidate or political committee totaling more than \$50 in the aggregate during a reporting period must identify the recipient and the amount of the contribution as part of its C-4 report covering that period.

If the in-kind contribution is in the form of an expenditure that has been obligated, but not yet paid, the

identity of the recipient candidate or political committee, along with a good faith estimate of the value of the contribution, must be disclosed in part 3 of Schedule B, in addition to the other information required by the form. When the expense is paid, the recipient's name and the amount of the contribution must be disclosed on Schedule A, along with the other information required by the form.

If a political committee provides equipment, property or anything else of value owned, leased or controlled by it to a candidate or political committee, the contributing committee must attach a statement to its C-4 report showing the name of the candidate or political committee to whom the contribution was made and the date, description and fair market value of the in-kind contribution.

~~((+6+))~~ **(7) Reporting by recipients.** Except as provided in subsection ~~((+4+))~~ **(5)** of this section, in-kind contributions from one source are not reportable by the recipient candidate or political committee until the aggregate value of all in-kind contributions received from that source during a reporting period is more than \$50. If this threshold is met, the in-kind contributions must be reported in part 1 of Schedule B to the C-4 report covering that reporting period.

~~((+7+))~~ **(8) Valuing in-kind contributions.**

(a) For purposes of determining the value of goods or services provided as in-kind contributions, refer to WAC 390-05-235, Definition--Fair market value.

(b) If an expenditure that constitutes an in-kind contribution is made, the value of the in-kind contribution to a particular candidate or political committee is the portion of the expense that benefits the candidate or political committee.

~~((+8+))~~ **(9) Application of RCW 42.17.105(~~((+8+))~~)--Last-minute contributions.**

(a) If an expenditure that constitutes an in-kind contribution is made no later than twenty-two days before a general election and written notice of the in-kind contribution is in the possession of the recipient candidate committee or political committee twenty-two or more days before that general election, the contribution is not subject to the respective \$5,000 or \$50,000 maximum amounts specified in RCW 42.17.105(~~((+8+))~~).

(b) If an in-kind contribution is in the form of personal services donated to a campaign for the duration of the twenty-one days before a general election, and if written notice of the value of this donation is in the possession of the recipient candidate or political committee twenty-two or more days before the election, that in-kind contribution is not subject to the respective \$5,000 or \$50,000 maximum amounts specified in RCW 42.17.105(~~((+8+))~~).

Brief Explanation: Under RCW 42.17.570 an electioneering communication may be a contribution if certain conditions are met. As such, the rule addressing in-kind contributions is amended to include reference to electioneering communications.

NEW SECTION

WAC 390-16-307 Contributions by controlled entities. (1) Corporations. Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch or department of a corporation that is participating in an election campaign or making contributions.

(2) A corporation is participating in an election campaign if it:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure ~~((or electioneering communication))~~ in support of or opposition to a candidate or an electioneering communication;

(c) Endorses a candidate prior to contributions being made by a subsidiary, branch or department of the corporation with respect to a candidate or that candidate's opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed prior to a contribution being made by a subsidiary, branch or department of the corporation; or

(e) Directly or indirectly collaborates or consults with its subsidiary, branch or department on matters relating to the support of or opposition to a candidate, including the amount of a contribution, when a contribution should be given, or what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

(3) **Trade associations, labor unions, collective bargaining organizations.** Two or more entities are treated as a single entity if one of the two or more entities is a local unit or branch of a trade association, labor union or collective bargaining association that is participating in an election campaign or making contributions.

(4) A trade association, labor union or collective bargaining organization is participating in an election campaign if it:

(a) Makes either a monetary or in-kind contribution to a candidate;

(b) Makes an independent expenditure ~~((or electioneering communication))~~ in support of or opposition to a candidate or an electioneering communication;

(c) Endorses a candidate prior to contributions being made by a local unit or branch of the association, union or organization with respect to a candidate or that candidate's

opponent;

(d) Makes a recommendation regarding whether a candidate should be supported or opposed prior to a contribution being made by a local unit or branch of the association, union or organization; or

(e) Directly or indirectly collaborates or consults with its local unit or branch on matters relating to the support of or opposition to a candidate, including the amount of a contribution, when a contribution should be given, or what assistance, services or independent expenditures, or electioneering communications, if any, will be made or should be made in support of or opposition to a candidate.

Brief Explanation: This rule implements RCW 42.17.660 by clarifying when various subsidiary units of a corporation, trade association, labor union or collective bargaining organization share a single contribution limit.

Staff is recommending that a correction be made to the proposed rule consistent with the statutory definition of electioneering communication.